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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,160	01/12/2004	Steven Tsengas	1409	1237

7590 01/12/2005

Law Offices of John D. Gugliotta PE, Esq.
202 Delaware Building, 137 South Main Street
Akron, OH 44308

EXAMINER

SHAW, ELIZABETH ANNE

ART UNIT PAPER NUMBER

3644

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

12/2

Office Action Summary	Application No. 10/755,160	Applicant(s) TSENGAS, STEVEN	
	Examiner Elizabeth A. Shaw	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 January 2004.
- 2a) This action is FINAL.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-13 and 17-26 is/are rejected.
- 7) Claim(s) 14-16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/12/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

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DETAILED ACTION

Specification

The amendment filed Mar. 29, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the aroma, liquid, semi-solid, or solid may be refreshed by twisting the toy; the aroma may be color coordinated with specific colors and aromas and that the toy is made of a thermoplastic material capable of floating.

Applicant is required to cancel the new matter in the reply to this Office Action.

The amendment filed April 14, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: that the aroma, liquid, semi-solid or solid is impregnated during fabrication or that juice may be used.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-3, 11-13, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham et al (RE. 34,352) in view of Markham (5,832,877). Markham et al '352 show a pet chew toy comprising an elongate body member 20 having a plurality of ribs 26 and a corresponding plurality of interstitial spaces 36 formed between and a concentric bore 24. Markham '877 shows a pet chew toy having an elongated body 20, parallel ribs 30 and 32, and an interstitial space 40 filled with consumable treats 28. Also figure 10 shows a toy T' having a first bore 72 and a second bore 74 parallelly disposed to the first bore 72. With respect to claims 1 and 3, to fill the toy of Markham '352 with treats as shown by Markham '877 would have been obvious to one skilled in the art in order to make the toy more desirable to the animal. With respect to claims 11 and 12, the direction of the ribs around the central bore of the toy of Markham '352 with treats as shown by Markham '877 would have been obvious to one skilled in the art in order to change aesthetic appearance of the toy or to be able to hold different amount of treats in differently shaped ribs.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham '352 in view of Markham '877 as applied to claims 1 and 2 above, and further in view of Herrenbruck (6,484,671). The combination of the Markham patents does not disclose the use of caps for closure. Herrenbruck shows a pet chew toy 100 having a bore 108 enclosed at both ends by threaded or bond molded caps 106. With respect to claims 4-7, to use the caps or Herrenbruck with the pet toy of the combination of Markham '352 and Markham '877 would have been obvious to one skilled in the art as a

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replacement of functional equivalents, replacing one pet toy for the other with the intention of slowing or stopping the release of treats from the toy.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham '352 in view of Markham '877 as applied to claims 1 and 2 above, and further in view of Coombs et al (5,634,436). The combination of the Markham patents does not disclose the use of a sound module. Coombs et al teach a pet toy having a central bore 14 housing a sound module 56 generating a prerecorded sound upon activation, see column 4, lines 64-67 and column 5, lines 1-26. The sound module 56 is braced by a cushion 63 and support 58 with fasteners 60 to halt movement within the bore 14. With respect to claim 8, to use the sound module of Coombs et al with the pet toy of the combination of Markham '352 and Markham '877 would have been obvious to one skilled in the art in order to attract and amuse the animal into using the device further.

Claims 18 and 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham '352 in view of Markham '877 as applied to claim 1 above, and further in view of Edwards (4,557,219). The combination of the Markham patents does not disclose the use of scent. Edwards teaches a pet chew toy 12 composed of a molded thermoplastic capable of floating, col. 5, lines 25-31 and impregnated with a scent during the molding process, col.7, lines 21-31. The aroma or flavor is refreshed during use by the animal, see col. 6, lines 30-62. With respect to claims 18, 22 and 26, to use the flavor impregnated with the toy as taught by Edwards with the pet toy of the combination of Markham '352 and Markham '877 would have been obvious to one skilled in the art in order to attract and amuse the animal into using the device further.

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With respect to claims 23-25, to use a specific flavor impregnated in the toy as taught by Edwards with the pet toy of the combination of Markham '352 and Markham '877 would have been obvious to one skilled in the art in order to provide aesthetic choices to the pet according to which the pet prefers more to attract and amuse the animal into using the device further.

Allowable Subject Matter

Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

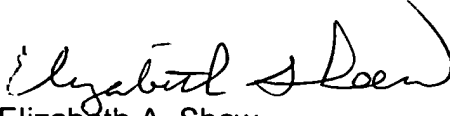
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference on pet chew toys are: Axelrod (4,771,733), Chill (5,595,142), Maudlin, Jr. (5,813,366), Miller (6,186,096), Markham (6,546,896) and Tsengas (6,550,426).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 703-308-1853. The examiner can normally be reached on M-Th 9:00-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Elizabeth A. Shaw
Examiner
Art Unit 3644

December 15, 2004


TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER